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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.80 OF 2005

M/s. Mecord System & Services P. Ltd... Petitioner

Versus

The Commissioner of Income Tax ... Respondents

Mr. M. Subramanian with Mr. V.S. Hadade for Petitioner.

Mr. Vimal Gutpa with Mr. P.S. Sahadevan for Respondents.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 31, 2007

P.C.

. The appellant had raised several questions in Para 5 of the Appeal memo. The questions (a) to (d) pertain to disallowance of repair expenditure of the sum of Rs.14,58,960/- which the appellants contend ought to have been allowed as business expenditure. The question (e) and (f) pertain to disallowance of the demonstration and exhibition expenses and the questions (g) and (h) pertain to disallowance of repair expenses.

. We have heard the counsel for parties. From the records what appears is that the assessee were allowed to use the premises for the period of three years without any consideration but with a condition that

they should keep the premises in repaired and habitual condition. The amount of expenditure incurred has been quantified in the sum of Rs.14,58,960/-. Inspite of these two findings, the said amount has been disallowed. The learned counsel draws our attention to the judgment of the Supreme Court in Commissioner of Wealth Tax Vs. Madras Auto Service (P) Ltd. 233 ITR 468 to contend that as the expenditure incurred is not of the enduring nature, in so far as assessee is concerned, that ought to have been treated as business expenditure.

. In so far as other questions are concerned, it is pointed out that the tribunal has not addressed itself to the issues which he ought to have answered, the contentions as urged on behalf of the appellants.

. Considering the above, in our opinion, the interest of justice would require that the impugned order is set aside and the matter is remanded back to the tribunal for hearing the parties afresh on the questions as formulated before this court. In the light of that impugned order is set aside. The matter is remanded back to the tribunal for hearing the parties de novo and thereafter to pass appropriate order according to law. Petition disposed of accordingly.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**